STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of AVERY MAJOR, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

LORI LYNN SCOTT,

Respondent-Appellant,

and

RUSTY NEAL MAJOR,

Respondent.

UNPUBLISHED
August 25, 2005

No. 258535
Wayne Circuit Court
Family Division
LC No. 03-424301-NA

Before: Cooper, P.J., and Fort Hood and R.S. Gribbs*, JJ.

PER CURIAM.

Respondent-appellant appeals as of right from the order terminating her parental rights pursuant to MCL 712A.19b(3)(c)(i) and (g).[1] We affirm.

Respondent-appellant does not challenge the sufficiency of the evidence establishing the statutory grounds for termination. Rather, she alleges that her due process rights were violated when petitioner called the foster care supervisor, Carolyn Rayford, as a witness, and not the original foster care worker, Polly Wilson. Respondent-appellant did not raise this due process issue in the trial court. Therefore, this issue is not preserved for appellate review. However, we

[1] Although the trial court cited MCL 712A.19b(3)(g) in its written order, it cited (3)(j) in its findings stated on the record at the September 24, 2004 bench trial. Because a court speaks through its written orders, *In re Gazella*, 264 Mich App 668, 677; 692 NW2d 708 (2005), respondent-appellant's parental rights were terminated pursuant to MCL 712A.19b(3)(g).

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

may review an unpreserved issue for plain error that affected substantial rights. *People v Carines*, 460 Mich 750, 764; 597 NW2d 130 (1999).

As an initial matter, we note that irrespective of the argument as briefed by counsel, hearsay is admissible at the dispositional stage of a termination proceeding. *In re Ovalle*, 140 Mich App 79, 82; 363 NW2d 731 (1985). "The requirements of due process do not prevent the admission of hearsay testimony as long as the evidence is fair, reliable and trustworthy." *Id.*[2] In the present case, respondent-appellant testified that she had attended visits that were not reflected in the written reports prepared by the original case worker. However, respondent-appellant did not admit the written sign in sheets that would have supported her claim and contradicted the written reports.

Additionally, while respondent-appellant asserted that she had taken steps to be reunited with her child and merely needed an additional period of time, she admitted on cross-examination that she did not contact the agency or her attorney to meet the goals of her parent/agency agreement. There was a one month period between the referral to a treatment center and respondent-appellant's incarceration for a probation violation. Respondent-appellant did not enter the program after the referral and faulted the agency, asserting that it had not provided her with a bus ticket. Once incarcerated, respondent-appellant was referred to a treatment center. She left the treatment center and was not incarcerated again for three months. During this time period, respondent-appellant did not contact the agency or seek services to permit reunification with her child. She did not seek visitation with her child. Respondent-appellant testified that she was told by the original case worker that she could not see her child. However, she did not contact the family court or consult with her attorney to determine if the information from the case worker was correct. Respondent-appellant did not complete parenting classes, did not engage in family or individual counseling, and did not have a legal source of income. Under the circumstances, irrespective of any hearsay information, the testimony of respondent-appellant supported the family court's ruling.

Although we cannot ascertain from the lower court record why the worker did not testify at trial, it is clear that a foundation was laid for the supervisor to testify. Rayford had been involved with the case at hand as a foster care supervisor and had reviewed the file. Moreover, review of the lower court record reveals that respondent-appellant's attorney was given the opportunity to cross-examine Rayford rather extensively regarding her knowledge of the case

[2] See also MCR 3.977(G)(2), "The Michigan Rules of Evidence do not apply … The parties must be afforded an opportunity to examine and controvert written reports so received and shall be allowed to cross-examine individuals who made the reports when those individuals are reasonably available." Counsel for respondent-appellant did not object to the testimony by the supervisor and was able to cross-examine her regarding the content of the written reports. We note that respondent-appellant never objected to the absence of the original case worker at the dispositional hearing. Despite the fact that respondent-appellant alleged that the testimony of the original case worker would correct errors in the written reports, she did not request an adjournment to allow her to present the original case worker as a witness. A party may not harbor error as an appellate parachute. *People v Fetterley*, 229 Mich App 511, 520; 583 NW2d 199 (1998).

and whether everything had been properly documented. Respondent-appellant maintains that she could not successfully confront those business records because Wilson was not called as a witness. However, she acknowledged that her attorney challenged the written records relied on by Rayford. To the extent that respondent-appellant is attempting to argue that her trial counsel was ineffective in failing to call Wilson as a witness, the decision whether to present evidence is presumed to be sound trial strategy that this Court will not review with the benefit of hindsight. *People v Barnett*, 163 Mich App 331, 338; 414 NW2d 378 (1987). Plain error did not occur where petitioner called the foster care supervisor, rather than the foster care worker, to testify.[3]

Finally, the evidence failed to establish that termination of respondent-appellant's parental rights was clearly not in the child's best interests. The child was born positive for cocaine and consequently suffered health problems. The child needed permanence in her life that respondent-appellant was unable to provide.

Affirmed.

/s/ Karen M. Fort Hood
/s/ Roman S. Gribbs

[3] Irrespective of the argument as briefed by counsel, we note that hearsay is admissible at the dispositional stage of a termination proceeding. *In re Ovalle*, 140 Mich App 79, 82; 363 NW2d 731 (1985). "The requirements of due process do not prevent the admission of hearsay testimony as long as the evidence is fair, reliable and trustworthy." *Id*.